

NICHOLAS A. TRUTANICH
United States Attorney
District of Nevada

CAROLYN B. CHEN, CSBN 256628
Special Assistant United States Attorney
160 Spear Street, Suite 800
San Francisco, California 94105
Telephone: (415) 977-8956
Facsimile: (415) 744-0134
E-Mail: carolyn.chen@ssa.gov

Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID ARY,

Plaintiff,

vs.

ANDREW SAUL,
Commissioner of Social Security,

Defendant.

)
) Case No.: 3:20-cv-00104-MMD-WGC

)
) **ORDER GRANTING**

)
) **UNOPPOSED MOTION FOR EXTENSION OF**
) **TIME TO FILE CERTIFIED**
) **ADMINISTRATIVE RECORD AND ANSWER;**
) **DECLARATION OF CHRISTIANNE VOEGELE**

)
) **(FIRST REQUEST)**

1 Defendant, Andrew Saul, Commissioner of Social Security (the “Commissioner”), by and through
2 his undersigned attorneys, hereby moves for a sixty-day extension of time to file the Certified
3 Administrative Record (CAR) and answer to Plaintiff’s Complaint. The CAR and answer to Plaintiff’s
4 Complaint are due to be filed by July 17, 2020.

5
6 In light of the global COVID-19 pandemic, the Social Security Administration (“SSA” or the
7 “Agency”) has taken the unprecedented step of suspending in-office services to the public:
8 <https://www.ssa.gov/coronavirus/>. The Agency is focusing on providing the most critical services by
9 mail, phone and online to those most in need. SSA is also taking additional steps to protect its employees
10 and help stop the spread of COVID-19, maximizing social distancing, including significantly limiting
11 employee access to SSA facilities for health and safety only and has moved toward a temporary virtual
12 work environment. Electronic processes allow some of SSA’s most critical work to continue with
13 minimal interruption; other workloads have been suspended until the health crisis abates or the Agency is
14 able to create new electronic business processes.

15
16 For purposes of this particular case, the public health emergency pandemic has significantly
17 impacted operations in the Social Security Administration’s Office of Appellate Operations (OAO) in
18 Falls Church, Virginia. That office is responsible for physically producing the administrative record that
19 is required to adjudicate the case under Sections 205(g) and (h) of the Social Security Act, 42 U.S.C.
20 § 405(g) and (h). *See* SSA Program Operations Manual System GN 03106.025, *available at*
21 <https://secure.ssa.gov/apps10/poms.nsf/lnx/0203106025>.

22
23 As detailed in the attached declaration, beginning March 16, 2020, OAO’s staff members began
24 to telework to protect employee health and prevent further spread of COVID-19. At that time, critical in-
25 person physical tasks associated with preparing the administrative record could not be accomplished. For
26 example, prior to the COVID-19 pandemic, to safeguard Personally Identifiable Information (PII), all

1 hearing recordings, which are part of the administrative record, were downloaded onto compact discs and
2 encrypted. OAO securely routed the encrypted discs to a private contractor through a daily pickup and
3 delivery service at the Official Duty Station (ODS) in Falls Church, Virginia. The private contractor
4 would transcribe the hearing recording and send the paper copy of the hearing transcript back to OAO.
5 OAO personnel would then scan the hearing transcript into the electronic record or place the hearing
6 transcript in the paper case file. Thereafter, OAO personnel would assemble the administrative record in
7 a prescribed order.
8

9 To ensure a continuity of operations, OAO has been actively pursuing mitigation efforts to allow
10 the remote preparation of administrative records. For cases in which the private contractors were already
11 in possession of hearing recordings for transcription, with the assistance of the Office of Acquisitions and
12 Grants (OAG), OAO received approval to receive these transcripts from the private contractors via
13 secured email, e.g., using password protection and redacted Social Security Numbers. In April 2020,
14 OAO began receiving such hearing transcripts from private contractors via secured email.
15

16 For cases in which OAO had not yet submitted recordings to the private contractors before March
17 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these cases. In May
18 2020, OAO began encrypting hearing recordings and securely emailing them to the contractors for
19 transcription. Through the month of May, OAO and the contractors worked to resolve technical issues
20 that arose, particularly with large files. The process is functioning now, albeit at only half of normal
21 productivity.
22

23 Given the volume of pending cases, Defendant requests an extension in which to respond to the
24 Complaint until September 15, 2020. If in sixty days the CAR is not prepared, the Commissioner will
25 file a status report with the Court as to when he expects the CAR to be completed.
26

1 On July 10, 2020, the undersigned conferred with Plaintiff, who has no opposition to the requested
2 extension.

3 It is therefore respectfully requested that Defendant be granted an extension of time to file the CAR
4 and answer to Plaintiff's Complaint, through and including September 15, 2020.
5
6

7 Dated: July 10, 2020

Respectfully submitted,

8 NICHOLAS A. TRUTANICH
9 United States Attorney

10 /s/ Carolyn B. Chen
CAROLYN B. CHEN
11 Special Assistant United States Attorney
12
13

14 IT IS SO ORDERED:

15 William G. Cobb
16 HONORABLE WILLIAM G. COBB
17 UNITED STATES MAGISTRATE JUDGE
18
19

20 DATED: July 13, 2020
21
22
23
24
25
26